

Message Text

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PAGE 01 STATE 120448

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R 222253Z MAY 75
FM SECSTATE WASHDC
TO AMEMBASSY NEW DELHI

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E.O. 11652: N/A
TAGS: ETRA, IN
SUBJECT: ARBITRATION DISPUTE

REF: NEW DELHI 5246

1. SUBSTANCE OF REFTEL PASSED TO BRIDGELAND BY PHONE
MAY 2 AND BY LETTER MAY 6. BRIDGELAND'S REPLY, DATED
MAY 13, RECEIVED IN DEPARTMENT (INS) MAY 22. TEXT OF
REPLY IN PARA 2 BELOW.

2. QUOTE: THIS WILL ACKNOWLEDGE AND THANK YOU FOR YOUR
LETTER OF MAY 6, 1975 REPORTING THE OUTCOME OF PETER
LANDE'S CONFERENCE WITH K.C. SHARMA.

TO FIRST ANSWER YOUR QUESTION CONCERNING APPROACHES TO THE
INDIAN GOVERNMENT, WE DO THINK IT WOULD BE APPROPRIATE FOR
THE EMBASSY TO TAKE THE MATTER UP WITH THE MINISTRIES OF
PETROLEUM AND COMMERCE.

I WROTE PETER UPON MY RETURN FROM NEW DELHI ADVISING HIM OF
THE STATUS OF OUR SETTLEMENT DISCUSSIONS. BRIEFLY STATED,
THE INDIANS OFFERED TO SETTLE THE PRESENT ARBITRATION
THROUGH APPLICATION OF THE DOLS 350,000 AWARD WHICH OUR
CLIENT RECEIVED IN THE FIRST ARBITRATION. OUR COUNTER-
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PAGE 02 STATE 120448

PROPOSAL WAS AS FOLLOWS:

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-- 1. OUR CLIENT WOULD GIVE UP THE DOLS 200,000 FINAL PAYMENT WHICH FCI IS WITHHOLDING UNDER THE CONTRACT NOW BEING ARBITRATED, AND WOULD WAIVE ITS CLAIM AGAINST FCI FOR WRONGFUL USE OF OUR CLIENT'S PHOSPHONITRIC PROCESS AND DUPLICATION OF ITS PLANT.

-- 2. IN ADDITION, WE OFFERED TO GIVE A CREDIT OF DOLS 98,000 AGAINST THE FIRST AWARD TO REIMBURSE THE INDIANS IN FULL FOR ACTUAL MODIFICATIONS THEY MADE TO THE PLANT.

-- 3. FINALLY, WE INDICATED WE WERE FLEXIBLE AND WOULD ENTERTAIN REASONABLE COUNTERPROPOSALS. WE ALSO AGREED THAT THE JUDGMENT ENTRY IN THE PRESENT ARBITRATION COULD BE WORDED TO FIND IN FAVOR OF THE INDIANS. THUS, WE CANNOT UNDERSTAND THE LOGIC OF MR. SHARMA'S STATEMENT THAT A SETTLEMENT WOULD BE CONTRARY TO THE POSITION TAKEN BY FCI WITH THE PARLIAMENTARY INQUIRY COMMITTEE.

-- WE ARE CONSIDERING NOW HOW TO PROCEED WITH RESPECT TO FCI'S WRONGFUL DUPLICATION OF OUR CLIENT'S PLANT. SECTION 9.3 OF THE CONTRACT PROVIDES THAT FCI WILL NOT "USE THE TECHNICAL INFORMATION, DRAWINGS OR ANY OTHER DATA CONTAINED THEREIN FURNISHED BY C & I UNDER THIS AGREEMENT FOR THE DESIGN OR INSTALLATION OF ANY OTHER PLANT OR DUPLICATION IN PART OR IN WHOLE OF THE PLANT WITHOUT THE PRIOR WRITTEN CONSENT OF C & I." OUR INSPECTION OF THE TROMBAY PLANT IN JANUARY, 1975 REVEALED THAT FCI IS MAKING A "CHINESE COPY" OF THE C & I PLANT IN THE EXPANSION BEING FINANCED BY THE WORLD BANK. WE HAVE NOT YET DECIDED WHETHER (1) TO INCLUDE THIS CLAIM IN THE PRESENT ARBITRATION, (2) TO BRING AN ACTION IN THE BOMBAY HIGH COURT, OR (3) TO ATTEMPT TO PROCEED OUTSIDE INDIA. IF THE CASE IS NOT TO BE SETTLED, WE WILL OBVIOUSLY TAKE ALL POSSIBLE STEPS TO ENFORCE SECTION 9.3 AGAINST FCI AND EMBASSY PERSONNEL ARE FREE TO REPORT THIS AND OTHER RESPECTS OF THE CASE TO THE MINISTRIES.

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PAGE 03 STATE 120448

-- WE WILL BE GRATEFUL IF YOU WILL CONVEY THIS TO PETER AND ASK HIM TO GIVE US A PROMPT REPORT SO WE CAN TAKE WHAT FURTHER ACTION APPEARS APPROPRIATE UNDER THE CIRCUMSTANCES. SINCERELY YOURS, JAMES R. BRIDGELAND, JR.
END QUOTE. INGERSOLL

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